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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4161

11 **MATTHEW MANUEL LOPEZ**
12 **aka Mathew Manuel Lopez**
13 **aka Matthew Joseph Lopez**
14 **3195 Ruskin Drive**
San Jose, CA 95132

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH 67876**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about February 28, 2006, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 67876 to Matthew Manuel Lopez aka Mathew Manuel Lopez aka Matthew
23 Joseph Lopez (Respondent). The License was in full force and effect at all times relevant to the
24 charges brought herein and will expire on December 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code (Code) unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every
4 license issued by the Board may be suspended or revoked.

5 5. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
6 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
7 disciplinary action during the period within which the license may be renewed, restored, reissued
8 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
9 renewed within three years following its expiration may not be renewed, restored, or reinstated
10 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
11 the Code provides that any other license issued by the Board may be canceled by the Board if not
12 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
13 reissued but will instead require a new application to seek reissuance.

14 STATUTORY AND REGULATORY PROVISIONS

15 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
16 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
17 not be limited to, any of the following:

18 (h) The administering to oneself, of any controlled substance, or the use of any dangerous
19 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
20 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
21 to the extent that the use impairs the ability of the person to conduct with safety to the public the
22 practice authorized by the license.

23 (j) The violation of any of the statutes of this state, of any other state, or of the United
24 States regulating controlled substances and dangerous drugs.

25 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
26 violation of or conspiring to violate any provision or term of this chapter or of the applicable
27 federal and state laws and regulations governing pharmacy, including regulations established by
28 the board or by any other state or federal regulatory agency.

1 8. Section 4060 of the Code provides, in pertinent part, that no person shall possess any
2 controlled substance, except that furnished upon a valid prescription/drug order.

3 9. Health and Safety Code section 11170 provides that no person shall prescribe,
4 administer, or furnish a controlled substance for himself or herself.

5 10. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess
6 an opium pipe or other paraphernalia used to inject or smoke controlled substances.

7 11. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
8 any controlled substance in Schedule II, subdivision (d), without a prescription.

9 12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
10 person to use or be under the influence of any controlled substance in Schedule II (Health and
11 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,
12 except when administered by or under the direction of an authorized licensee.

13 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation of the licensing
15 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

16 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

17 14. Section 4021 of the Code states:

18 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
19 11053) of Division 10 of the Health and Safety Code.”

20 15. Section 4022 of the Code states, in pertinent part:

21 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
22 except veterinary drugs that are labeled as such, and includes the following:

23 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
24 prescription,’ ‘Rx only,’ or words of similar import.

25 ...

26 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
27 prescription or furnished pursuant to Section 4006.

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16. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FACTUAL BACKGROUND

17. On or about June 23, 2010, Respondent was sitting in a parked vehicle when he was contacted by officer(s) from the Santa Clara (CA) Police Department. The officer(s) noted that Respondent was exhibiting signs of being under the influence of drugs (fluttering eyelids, lack of pupil response to ambient light), and a search of the vehicle revealed a plastic baggie containing a white crystal substance that subsequently tested positive as **methamphetamine** (0.5 grams).

18. On or about September 13, 2010, Respondent was issued a Notice to Appear by Santa Clara (CA) Police for misdemeanor violation of Santa Clara Municipal Code section 9.05.010(a) (Urinating in Public). On or about October 5, 2010, Respondent entered a plea guilty and was convicted of violating Santa Clara Municipal Code section 9.05.010(a) (Urinating in Public), a misdemeanor. Imposition of sentence was suspended in favor of a probation period of one year.

19. On or about September 17, 2010, Santa Clara (CA) Police officer(s) responded to a report of a suspicious male in the bathroom of a Safeway store. Respondent exited the bathroom carrying an open container of beer. When the officer(s) spoke to Respondent outside the store, he exhibited symptoms consistent with a stimulant drug, including quick and raspy speech, sweating, hot and clammy skin, involuntary, fidgeting movements, grimacing mouth movements, fluttering eyelids, and pupils that were non-reactive to ambient light). Respondent admitted to the officer(s) that he had smoked **methamphetamine** about three hours prior, and that he went in the bathroom at the Safeway to masturbate. The officer(s) searched a gym bag that Respondent was carrying and found a clear glass smoking pipe with white, grey and black residue, that was recognized to be used to smoke **methamphetamine**. Respondent admitted that the pipe belonged to him.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance)

3 20. Respondent is subject to discipline under section 4301(h) of the Code, in that
4 Respondent, as described in paragraph(s) 17 and/or 19 above, self-administered
5 **methamphetamine**, a controlled substance, on one or more occasions.

6 SECOND CAUSE FOR DISCIPLINE

7 (Possession of Controlled Substance)

8 21. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
9 4060 of the Code, and/or Health and Safety Code section 11377, in that Respondent, as described
10 in paragraph(s) 17 and/or 19 above, possessed, conspired to possess, and/or assisted in or abetted
11 possession of **methamphetamine**, a controlled substance, without a prescription.

12 THIRD CAUSE FOR DISCIPLINE

13 (Possession of Drug Paraphernalia)

14 22. Respondent is subject to discipline under section 4301(j) and/or (o), and/or Health
15 and Safety Code section 11364, in that Respondent, as described in paragraph 19 above,
16 possessed, conspired to possess, and/or assisted in or abetted possession of drug paraphernalia.

17 FOURTH CAUSE FOR DISCIPLINE

18 (Self-Administration/Use of Controlled Substance)

19 23. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
20 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in
21 paragraph(s) 17 and/or 19 above, self-administered/used, conspired to self-administer/use, and/or
22 assisted in/abetted self-administration/use of a controlled substance, without a prescription.

23 FIFTH CAUSE FOR DISCIPLINE

24 (Unprofessional Conduct)

25 24. Respondent is subject to discipline under section 4301 of the Code in that
26 Respondent, as described in paragraph(s) 17-23 above, engaged in unprofessional conduct.

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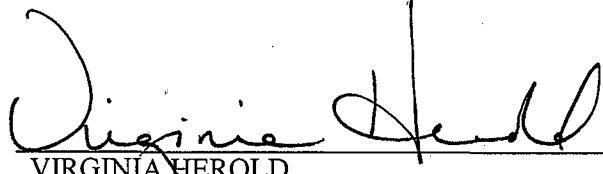
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 67876, issued to Matthew Manuel Lopez aka Mathew Manuel Lopez aka Matthew Joseph Lopez (Respondent);
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 6/15/12


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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